INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statement	2
Argument	5
Conclusion	6

CITATIONS

Case:

Fisher v. *United States*, 328 U.S. 463	5

Statute and Rule:

Federal Youth Corrections Act, 18 U.S.C. 5010(b)	2
F. R. Crim. P., Rule 30	5

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 181

ROBERT P. GALLOWAY, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 1a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was rendered on May 10, 1956 (R. 122) and a petition for rehearing was denied on June 2, 1956 (R. 130). The petition for a writ of certiorari was filed on June 20, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether petitioner, the defendant in an assault case, may complain of the trial court's instruction as to the

law of self-defense when he withdrew his proposed instruction on that point and failed to make specific objection to the instruction as given by the court.

STATEMENT

After a trial by jury, petitioner was found guilty under the second count of a two-count indictment charging him with assaulting a District of Columbia police officer, John B. Paul, in violation of 22 D. C. Code 505. He was found not guilty of a similar assault on Officer Harry Q. Barbour, charged in count one (R. 1, 120). Petitioner was committed to the custody of the Attorney General under the Federal Youth Corrections Act (18 U. S. C. 5010 (b)). On appeal to the United States Court of Appeals for the District of Columbia Circuit, the judgment was affirmed (Pet. App. 1a).

The evidence adduced by the government may be summarized as follows:

During the evening of March 11, 1955, the proprietress of a restaurant complained to Officer Hilton of the District of Columbia Metropolitan Police that a coat had been stolen (R. 9-11, 23). She told the officer that her coat had been there when petitioner and some companions entered her restaurant, but that when they left she noticed that it was missing (R. 15-16). After making an official report of the larceny complaint at precinct headquarters, Officer Hilton returned to the neighborhood of the restaurant where he found petitioner in an automobile (R. 10-11, 16). Officer Hilton told petitioner that a coat had been stolen from the restaurant about the time petitioner had been there, and asked him whether he would mind accompanying him to the stationhouse to talk with "the precinct man"

(R. 11, 16-17, 19). Petitioner replied (R. 19), "No, I don't mind talking to nobody because I did not take no coat."

On the way to the stationhouse, petitioner began to create a disturbance, cursing the police and telling the officer he was (R. 11) "tired of these so-and-so's picking me up every time." When he persisted, Officer Hilton placed him under arrest for creating a disturbance and took him to the stationhouse (R. 11).

When they arrived, petitioner (R. 12) "was still loud and boisterous," and was cursing (R. 31, 45). Because he was (R. 21) "raising so much cain" he was immediately taken upstairs to the detectives' room rather than the booking desk on the first floor (R. 11-12, 21). There, Officer Hilton explained to Officer Barbour what had happened (R. 12). Officer Barbour then told Officer Hilton to take him downstairs. At that point, petitioner arose from a chair where he had been sitting, struck Officer Barbour in the mouth, knocked him backward and lunged at him, tearing his shirt. Officer Hilton intervened to help Officer Barbour and both went through the doorway down the stairs to a landing. Officer Barbour, who by then had recovered his balance, came near petitioner to help Officer Hilton, at which point petitioner kicked him in the groin, and then, when he went down, in the eye (R. 12-13, 50-51).

Officer Paul, who heard the scuffling on the steps from downstairs, went to the scene and saw petitioner fighting to get away from Officer Hilton (R. 41). Seeing one Randolph Chase, an employee of petitioner's mother (R. 41), advancing toward the pair, and not knowing what his intentions were, Officer Paul went over to pull him away. At that point petitioner kicked

Officer Paul first in the groin and again in the stomach as he fell down unconscious (R. 13-14, 41-42). Both officers were hospitalized because of their injuries (R. 42-43, 51-53).

Petitioner, in his own defense, testified that Officer Barbour had struck him first, that other officers had beat him, and that he had kicked Officer Paul while trying to get loose (R. 86).

Before the jury retired to consider its verdict, petitioner submitted to the trial court as his ninth proposed instruction the following (Pet. 11):

You are instructed:

> In this case defendant has testified that he was first struck by officer Barbour. If you find this to be a fact, then you are instructed that it then became the legal right of Galloway to defend himself and to repel all persons whom he had reasonable grounds to believe were about to assault him or who were attempting to assault him or who were engaged in assisting another to assault him, with such force as Galloway reasonably believed necessary to repel his assailant or assailants.
>
> Unless you are convinced beyond a reasonable doubt that Galloway did not act in self defense as outlined to you above, then your verdict must be *Not Guilty* on both counts of the indictment.

However, in conference, his counsel withdrew this proposed instruction (R. 116), and, in lieu thereof, the trial judge charged the jury in his own language and in detail as to the District of Columbia law regarding the defense theory of self-defense and unintentional injury (R. 112-113). Petitioner took no specific exception to that part of the charge as it was given (R. 114-117).

ARGUMENT

Petitioner's contention that the trial court erred in failing to give as part of his charge to the jury a proposed instruction which petitioner had previously withdrawn is without merit. Whether or not the proposed instruction was a correct statement of District of Columbia law, petitioner's failure to object specifically to the self-defense instruction as given, or to request that it be amplified in any way before the jury retired, precluded him from raising the point after verdict. Rule 30, F. R. Crim. P.

The Court of Appeals for the District of Columbia Circuit, usually the court of last resort as to questions of District of Columbia law (*Fisher* v. *United States*, 328 U. S. 463, 467), did not pass on the legal issue now presented by petitioner, since it found that the evidence did not support its application to this case in any event. This conclusion is correct. Neither the testimony of the government witnesses nor of petitioner adequately supports the theory that petitioner struck Officer Paul to repel an assault or a threatened assault. In any event, the trial court explained to the jury, in an extended charge, the theory of self-defense under District of Columbia law, and petitioner failed to object or to seek amplification.

CONCLUSION

The decision below is correct, and it involves no question of general importance. It is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
CARL H. IMLAY,
Attorneys.

JULY, 1956.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1956 991629

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